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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/796,287

03/10/2004

Klaus Lidolt

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9372

30743

7590

07/31/2006

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EXAMINER

ALI, SHUMAYA B

ART UNIT

PAPER NUMBER

3743

DATE MAILED: 07/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/796,287

Applicant(s)

LIDOLT ET AL.

Examiner

Shumaya B. Ali

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>detailed action</u> . |

Response to Arguments

Applicant's arguments with respect to claims 1,3-8 have been considered but are moot in view of the new ground(s) of rejection.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, and 5-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Krahner et al. US Patent No. 6,436,058.

As to claim 1, Krahner et al. disclose an orthopedic rehabilitating device, therefore disclose an orthopedic device (205) in figures 1-12, comprising two parts (205,310) of an orthopedic joint (col.8 lines 56-57) which are movable relative to one another; a locking device (330), with respect to the language of “for locking the two parts in a predetermined relative position and for unlocking the two parts in order to permit movement of the two parts with respect to one another” Applicant is reminded that the recitation of intended use is not given patentable weight in the apparatus claim. Krahner et al further disclose a control module (215) with respect to the language of “for electromechanically actuating said locking device” Applicant is reminded that the recitation of intended use is not given patentable weight in the apparatus claim; and an actuating unit (270,235,230,240,255,265,275, and 260) integrated into a walking

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aid which is separate from said orthopedic joint for sending an actuating signal by wireless (col.8 lines 41-4) transmission to the control module.

As to claim 5, Krahner et al. disclose wherein the actuating unit includes a manual transmitter (250).

As to claim 6, Krahner et al. disclose wherein the control module is capable of transmitting one or more of an acknowledgment signal or a warning signal to the actuating unit (col.7 lines 30-34).

As to claim 7, Krahner et al. disclose wherein the actuating unit includes one or more of a visual display (fig.2b), an acoustic signal arrangement, and a vibrator (245), wherein one or more of said visual display, acoustic signal arrangement, or said vibrator that is controlled by an acknowledgment signal or warning signal transmitted by said control module (col.6 lines 55-57, col.7 lines 25-32).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 3,4, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krahner et al. US Patent No. 6,436,058.

As to claim 3, Krahner et al. disclose claimed invention as applied to claim 1 except for wherein the actuating unit is accommodated in a handgrip of the walking aid. However, Krahner et al actuating unit can be a cellular phone/computer (see col. 8 lines 41-44), therefore, it would have been obvious to one of ordinary skill in the art to consider cellular phone to inherently have a handgrip because the user would have to handgrip the phone in order to receive/dial calls.

As to claim 4, Krahner et al. disclose an actuating button (260) arranged on a free end face (see fig. 2b) of the handgrip.

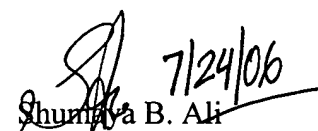
As to claim 8, Krahner et al. disclose wherein the vibrator is arranged in a handgrip of the walking aid. However, Krahner et al actuating unit can be a cellular phone/computer (see col. 8 lines 41-44), therefore, it would have been obvious to one of ordinary skill in the art to consider cellular phone to inherently have a handgrip because the user would have to handgrip the phone in order to receive/dial calls.

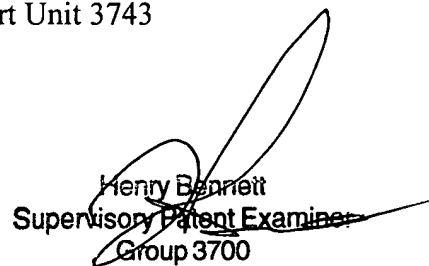
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shumaya B. Ali whose telephone number is 571-272-6088. The examiner can normally be reached on M-F 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Shumaila B. Ali
Examiner
Art Unit 3743


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